

Writing Your Will

Everyone knows you should have a will, but apparently more than half of us haven't gotten around to it yet. Here is some information that might convince you to get it done.

Why should I go to the trouble of writing a will?

A will lets you control what happens to your property. If you have minor children, a will enables you to designate who will care for them after your death. Through a will you can nominate a legal guardian for your children and name an executor to handle the distribution of your estate to your designated beneficiaries.

What happens if I die without a will?

Since your property must still be distributed, the probate court in your area will appoint someone as the administrator of your estate to distribute the property in accordance with the state laws. The costs associated with this are more expensive than having an executor named by you in advance and must be paid out of your estate before any property is distributed.

What is a video will?

More and more people are preparing a video in which they read the will and explain why certain gifts were made and others not made. The video recording might also show the execution of the will. Should a disgruntled relative decide to challenge the will, the video can provide compelling proof that the person making the will was mentally competent and observed the formalities of execution.

Keep in mind that videos do not last forever and are subject to damage. You should consult a lawyer before making such a video to find out about your state's laws on video wills. Generally, such a video would supplement, not substitute, a properly prepared written will.

What do I have to do to make my will legally valid?

After you've drawn up your will, you must take the formal legal step of executing the will. This requires having at least two witnesses who have no potential conflict of interest. As a general rule, the witnesses watch you sign and each witness then signs in the presence of the other. If your will is executed in a lawyer's office, two other attorneys or support staff might serve as witnesses.

A valid will also requires that:

- you are of legal age, 18 in most states;
- you are mentally competent, i.e., that you know you are executing your will and know the general nature and extent of your property and your descendants or other relatives who would be expected to share in your estate;

- the will must have a substantive provision that disposes of your property and must indicate your intent to make the document your final word on what happens to your property;
- with rare exceptions, such as imminent death, the will must be written;
- you must sign the will unless illness, accident, or illiteracy prevents it, in which case you can designate someone to sign for you in your presence;
- your signature must be witnessed by at least two adults who understand that they are witnessing a will and are competent to testify in court.

If your will doesn't meet all of these conditions, it might be disallowed by a court and your estate might be distributed according to state law instead.

Can I leave my property to anyone I wish?

In general, you can pick the people you want your property to go to and leave it to them in whatever proportions you want, but there are some exceptions. For example, a surviving husband or wife may have the right to a fixed share of the estate regardless of the will. Some states limit how much you can leave to a charity if you have a surviving spouse or children, or if you die soon after making the provision.

Can I disinherit my spouse and children?

You usually can't disinherit your spouse, but in every state except Louisiana you may disinherit your children. Your intent to disinherit must be express—that is, it has to be stated in writing

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